

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 03-014-15-1-4-01589-16
Petitioner: RAW Corporation
Respondent: Bartholomew County Assessor
Parcel: 03-07-20-140-006.500-014
Assessment Year: 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. RAW Corporation filed an appeal with the Bartholomew County Assessor challenging the 2015 assessment of its mini-warehouse located at 112 Elm Street in Hope. The Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 notice of determination reducing the assessment to the following:

Land: \$33,800 Improvements: \$137,400 Total: \$171,200

2. RAW timely filed a Form 131 petition with the Board and accepted our small claims procedural rules. On January 31, 2018, Jacob Robinson, our designated administrative law judge (“ALJ”), held a hearing on the petition.¹ Neither he nor the Board inspected the subject property.
3. RAW appeared by Janice Whittington, its Secretary. Virginia R. Whipple of GnA Assessment Professionals, Inc., appeared as a local government representative for the Assessor. Both were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. A digital recording of the hearing

Petitioner’s Ex. 1: 2017 Property Record Card for 305 W. County Line Rd.
Petitioner’s Ex. 2: Two photographs of 305 W. County Line Rd.
Petitioner’s Ex. 3: 2017 Property Record Card for 14971 N. US 31

¹ RAW’s representative, Janice Whittington, did not arrive at the scheduled hearing time. After waiting approximately 40 minutes, the ALJ proceeded and noted for the record that the Board would issue an order of dismissal due to RAW’s failure to appear. Upon Whittington’s arrival for a subsequent hearing on a separate petition filed by RAW, the ALJ reopened the proceedings and conducted a full hearing on the merits, to which the Assessor did not object.

- Petitioner's Ex. 4: Two photographs of 14971 N. US 31
 Petitioner's Ex. 5: 2017 Property Record Card for 913 S. Main St.
- b. Respondent's Ex. A: Statement of Professionalism
 Respondent's Ex. B: Resumes of Gordon Lewis Wilson and Virginia R. Whipple
 Respondent's Ex. C: 2014 Property Record Card for subject property
 Respondent's Ex. D: 2015 Property Record Card for subject property
 Respondent's Ex. E: Aerial photograph of subject property
 Respondent's Ex. F: Aerial overview of RAW Corporation's properties
 Respondent's Ex. G: Petitioner Submitted Exhibits Summary
 Respondent's Ex. H: RAW Corporation Mini Warehouse Price/Sq. Ft Analysis
- c. Board's Exhibit A: Form 131 Petition and Attachments
 Board's Exhibit B: Notice of Hearing
 Board's Exhibit C: Hearing Sign-In Sheet
- d. The record also includes (1) all documents filed by the parties, (2) all orders and notices issued by the Board or the ALJ, and (3) these Findings and Conclusions.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessment must prove that the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and shifts the burden to the assessor to prove that the assessment is correct in specified circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. Ind. Code § 6-1.1-15-17.2(a), (b). The assessor may also have the burden of proof if the assessment increased by any amount after a taxpayer successfully appealed the prior year's assessment, unless the assessor valued the property using the income capitalization approach. Ind. Code § 6-1.1-15-17.2(d).
6. The Assessor argued that the burden shifting provision does not apply because the PTABOA valued the subject property using the income capitalization approach. RAW offered no argument regarding the burden. Our ALJ preliminarily ruled that RAW bore the burden of proof. But the income capitalization exception the Assessor relied on only relieves an assessor of the burden of proof if the burden is shifting under subsection 17.2(d). Here, there is no evidence indicating that RAW successfully appealed its 2014 assessment. And valuing the property using the income capitalization approach does not prevent the burden from shifting under subsections 17.2(a) and (b). Because the subject property's assessment increased by more than 5% between 2014 and 2015, the Assessor bears the burden of proof.

SUMMARY OF CONTENTIONS

7. The Assessor's case:
- a. The Assessor and Whipple certified that they completed their work in accordance with generally accepted appraisal principles and the Uniform Standards of Professional Appraisal Practice ("USPAP"). The Assessor employed the income capitalization approach to value the subject property and relied on RAW's actual rents provided at the PTABOA hearing. Large storage units rent for \$70 each and smaller units rent for \$35 each.² The Assessor assumed a 15% vacancy rate and a 10% management expense rate. Using these actual rents and other assumptions led to the Assessor's valuation of \$171,200. *Resp't Exs. A, D; Whipple testimony.*
 - b. The Assessor claimed that his price per square foot analysis indicated that RAW's property is valued below the mean and median values for all mini warehouses in Bartholomew County and for all similarly graded mini warehouses in the town of Hope. This demonstrates that the Assessor's assessment is equitable. *Resp't Ex. H; Whipple testimony.*
 - c. Regarding RAW's evidence, the Assessor argued that the comparable properties it selected are not actually comparable to the subject property in terms of age or taxing district. Moreover, RAW used information from 2017 Property Records Cards ("PRCs") to value its property. Even if RAW used the 2015 values listed on the 2017 PRCs, those PRCs only show the pricing information from 2017. *Resp't Ex. D; Pet'r Exs. 1, 3, 5; Whipple testimony.*
8. RAW's case:
- a. RAW's property consists of an old wood-framed storage building with a concrete foundation located on a half-acre parcel. It is not a steel building. RAW claimed that the change in value from 2014 to 2015 was entirely attributable to the Assessor changing the wall type from a Type 1 to a Type 3. This change in wall type was not warranted because nothing changed on the property. The Assessor thus incorrectly changed the wall type and assessed the property erroneously. Even if the wall type change was correct, the property's value should be reduced. *Resp't Exs. C, D; Whittington testimony.*
 - b. RAW submitted three PRCs to show the values of comparable properties. The first two properties, located at 305 W. County Line Rd. and 14971 N. US 31, are adjacent properties owned by Storage Express Holdings, LLC. Each property has some buildings with wall Type 1 and others with wall Type 3. RAW's third comparable is a storage facility located at 913 S. Main St. in Edinburgh owned by Michael Bryant. Bryant's facility was similar in age to the subject property and the Assessor classified

² The Assessor did not specify the number of large and small rental units available at the property or the length of time their respective rental rates covered (e.g., monthly, quarterly).

- its walls as wall Type 1, like the subject property. *Pet'r Exs. 1-5; Whittington testimony.*
- c. Although all of the PRCs RAW offered were for 2017, it claimed to be relying on the 2015 values listed on these cards as comparable values. RAW believes the subject property should be valued between \$120,000 and \$125,000. *Pet'r Exs. 1, 3, 5; Whittington testimony.*
 - d. Regarding the Assessor's income capitalization approach, RAW disagreed with the Assessor's assumed vacancy rate and management fees. RAW claimed it rented its small units so infrequently that they have since been removed from the property. RAW also noted that it had an appraisal showing a management fee rate of over 27%, but it did not offer the appraisal as evidence. *Whittington testimony.*

ANALYSIS

9. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
10. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how their evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for a 2015 assessment was March 1, 2015. I.C. § 6-1.1-4-4.5(f).
11. As discussed above, the Assessor bears the burden of proving the challenged assessment is correct. He attempted to support the assessment by using the income capitalization approach. The Assessor used RAW's actual rental rates to develop this approach. Although examining RAW's actual rents is an important step, relying on them exclusively is inappropriate when appraising the market value-in-use of a fee simple interest in a property. And there is no evidence that the Assessor considered any market rents. This alone deprives the Assessor's income capitalization approach of any

probative value. *See Indiana MHC, LLC v. Scott Cty. Ass'r*, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (citing THE APPRAISAL OF REAL ESTATE 493, 501, 509, 511-12 (12th ed. 2001)) (“[T]o provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses and occupancy rates for the subject property, but the income, expenses, and occupancy rates of comparable properties in the market as well.”) (emphasis in original).

12. Even if the Assessor had appropriately considered market rents, the lack of evidence supporting the other elements of his income capitalization approach would still undermine its probative value. The Assessor also failed to walk us through his analysis in sufficient detail. *See Long*, 821 N.E.2d at 471 (stating that as part of making a prima facie case, parties must walk the Board through every element of their analysis). While there was testimony about RAW’s actual rental rates, the Assessor failed to offer any evidence describing the number of rental units at the subject property, the length of time covered by the rates he relied on, or his calculation of the property’s potential gross income. Similarly, although Whipple testified regarding the vacancy and management expense rates used in the income approach, the Assessor offered no market-based evidence in support of either rate. The Assessor also failed to even reference the capitalization rate he selected, let alone provide any evidentiary support for it. Consequently, the Assessor’s value conclusion under the income capitalization approach is not probative evidence of the subject property’s market value-in-use.
13. Likewise, the exhibit and accompanying testimony comparing RAW’s property to all other mini warehouses in the area was insufficient to meet the Assessor’s burden. Even if we accept that the subject property’s assessment is below the median and average values for mini warehouses in the town of Hope or in Bartholomew County, this comparison does nothing to support a specific value for the property.
14. The Assessor failed to make a prima facie case that the 2015 assessment is correct. RAW is therefore entitled to have the subject property’s 2015 assessment reduced to its 2014 assessed value of \$112,700. Although RAW offered valuation evidence, it did not seek a valuation lower than the 2014 assessment. We therefore need not evaluate RAW’s contentions.

FINAL DETERMINATION

15. In accordance with the above findings and conclusions, we order the subject property’s 2015 assessment reduced to \$112,700.

ISSUED: April 25, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.